DRAFT AGREEMENT ON THE CONSTITUTION

Proposals by the Government of Québec

Québec

86-0167/

DRAFT AGREEMENT ON THE CONSTITUTION

Proposals by the Government of Québec

Québec

The French version of this document is the official government version.

The following is a translation.

Legal Deposit
2nd Quarter 1985
Bibliothèque nationale du Québec
Bibliothèque nationale du Canada

ISBN: 2-551-09069-5

© Government of Québec, May 1985

Table of Contents

Introduction 5

Part One:

Recognition of the Existence of the People of Québec 9

Part Two:

The Conditions for an Agreement 13

Chapter I:

Recognition of the Primary Authority of Québec in the Matter of Rights and Freedoms 17

1. Québec's Responsibility for Language Rights 17
2. Acceptance of the Primary of the Québec Charter of Human Rights and Freedoms 21

Chapter II:

Modification of the Constitutional Amendment Procedure 23

1. Recognition of a Power of Veto over Federal Institutions and the Creation of New Provinces 23
2. Modification of the Division of Powers 24

Chapter III:

Conditions for Participation 25

1. The Revision of the Distribution of Powers 26
   a) The Restriction and the Elimination of Certain Unilateral Powers of the Federal Parliament 26
   b) Adapting the Division of Powers to the Needs of Québec 27
2. Reform of Judicial System 30
   a) Québec's Participation in the Appointment of Judges to the Supreme Court of Canada 31
   b) The Attribution of Authority over the Appointment of Judges to the Québec Superior Courts 31
3. The Need for an Ongoing Process of Negotiations 32

Conclusion 35

Introduction

Québec was not a party to the constitutional Accord of November 1981, which led to the patriation of the Canadian Constitution and to its amendment in some essential respects.

Québec rejected this Accord and refused to acknowledge its legitimacy, because it was negotiated and concluded without its participation.

The Canada Act 1982 would be acceptable only if we could reach a new constitutional agreement with the rest of Canada, restoring to us our rights, recognizing the distinctiveness of our people and launching an in-depth review meeting our aspirations and our needs.

The present situation is viable neither for Canada nor for Québec. A federation cannot operate for the benefit of its citizens without the active participation of one of its major partners, just as Québec can never be satisfied with the diminished status imposed upon it. We must seek an opportunity to remedy this situation.

We believe that this opportunity has been afforded us by the election last September of a new government in Ottawa. It will be recalled that during the election campaign, the new Prime Minister of Canada not only recognized the reality of the problem, but also solemnly committed himself to resolving it:

> *"I know that, in the Province of Québec, there are wounds to be healed, worries to be calmed, enthusiasms to be rekindled, and bonds of trust to be established. (...)*
>
> *I know that many men and women in Québec will not be satisfied with mere words. We will have to make commitments and take concrete steps to reach the objective that I have set for myself and that I repeat here: to convince the Québec National Assembly to give its consent to the new Canadian Constitution with honour and enthusiasm."*
>
> (Notes for an address by the Honourable Brian Mulroney, P.C., M.P., Sept-Îles, 6 August 1984.).

This undertaking was reaffirmed at the opening of the Canadian Parliament last November 1:

> *"Ultimately such a new consensus must be reflected in the fundamental law of our land, for it is obvious that the constitutional agreement is incomplete so long as Québec is not part of an accord. While their principal obligations are to achieve economic renewal, my Ministers will work to create the conditions that will make possible the achievement of this essential accord. In this work, the cooperation of all partners in Confederation will be necessary."*
>
> (Speech from the Throne, Hansard, 5 November 1984, p. 6)

The Government of Québec, which had already insisted that the question be reopened, saw in these commitments an expression of good faith leading to new dialogue with real opportunities for both correcting the past and brightening the future. It thereupon agreed to reassess its attitude and formulate its requirements — and since then, has worked diligently to that end.

The Government of Québec has sought to fulfil that task faithfully and realistically. Its proposals follow in the tradition of all previous Québec governments and go beyond party lines; they are intended to respond to the concrete needs of our fellow citizens, yet without ignoring the future. These proposals take into account the new Canadian political environment. They are substantive proposals, submitted initially for consideration by Quebeckers and also for consideration by the other governments with the objective of concluding an agreement resulting from negotiations conducted in good faith.

These proposals, it will be seen, fit into the federal framework of the present Constitution. They are intended to improve it in such a way that the people of Québec may, as long as they so decide, find in it the most favourable conditions possible for their development. It goes without saying that they in no way alter the inalienable right of the people of Québec to democratic self-determination with regard to its constitutional future.

In developing these proposals, we have taken into account the requirements formulated by the National Assembly in its Resolution of 1 December 1981. We have also taken into consideration the recommendations of those who, as with the Pepin-Robarts Commission, have made an in-depth study of this question, as well as recommendations made recently by other interested parties in Québec.

Finally, we have based ourselves on requests made by our predecessors who, for over twenty years, have taken part in the long exercise of constitutional review — unfortunately, without much success.

Over and above redressing the wrongs caused Québec in 1981, in reopening this question, we are, as has been the case for almost twenty years, seeking constitutional structures adapted as much as possible to the changing reality of Québec and Canada.

In order to seize the new opportunity provided us to get things moving again, in initiating this process, the Government of Québec has duly noted the changes that have taken place in Québec and Canada. However, it is of the greatest importance that it be clearly understood what constitutes, today as yesterday, and regardless of the government of the day, the very essence of Québec's concern: the distinct character of the people of Québec and the legitimacy of the legal and institutional instruments derived therefrom.

Part One

Recognition of the Existence of the People of Québec

Recognition of the Existence of the People of Québec

The recognition of the existence of a people of Québec is an essential prerequisite in Québec's agreement and participation in a new constitutional relation. The present constitution acknowledges the Canadian duality only through the concept of institutionalized bilingualism. It makes no mention of the particular needs that flow from the differences between the people of Québec and the population of the rest of Canada.

During recent years, constraints have quickly appeared when Québec wanted to ensure the conformity of its development with the legitimate aspirations of its population in the fields of manpower, income security, communications, international cooperation, or the protection, affirmation and development of the French fact, to name but a few. It is necessary to understand fully that the Québec positions on these matters (which we shall discuss later) have been drawn up in accordance with the needs and aspirations peculiar to the people of Québec. These positions embody the various ways whereby the men and women of Québec express the conditions they consider essential for their fullest development.
The Pepin-Robarts Commission recommended not only that the distinctiveness of Québec be recognized, but also that Québec be permitted to determine its official language and that it be granted the necessary powers to assume its particular responsibility with respect to the French heritage within its own territory.

The recognition of Québec's distinctiveness alone is meaningless, unless it is matched with provisions that give it substance; it must also be reflected in content, which is the basis of the following chapters. This recognition of Québec's distinctiveness constitutes an essential step in the coherence of the undertaking.

To sum up, the Governement of Québec proposes:

- That the Constitution explicitly recognize the existence of a people of Québec.

Part Two

The Conditions for an Agreement

The Conditions for an Agreement

Once the existence of the people of Québec is recognized in the Canadian Constitution, Québec stands ready to conclude a new accord, insisting upon certain conditions. Québec will consider itself party to the agreement if its primary authority in the matter of rights and freedoms is recognized, if the rest of Canada agrees to modify the amending formula to grant Québec satisfactory guarantees, and if agreement is reached on the terms of Québec's participation.

Chapter I

Recognition of the Primary Authority of Québec in the Matter of Rights and Freedoms

Québec can take pride in being the guarantor of individual rights and freedoms through its institutions. The Government of Québec intends to protect the integrity of its jurisdiction in this matter. This applies to language rights which are so intimately linked to the personality of the people of Québec: it is Québec that must assume primary responsibility for these rights. This is also true in the domain of civil, political, economic and social rights codified by the Québec Charter of Human Rights and Freedoms, which should alone take precedence over Québec statutes.

1. Québec's Responsibility for Language Rights

The distinctiveness of the people of Québec goes far beyond the question of language, but language is at the origin and the heart of that distinctiveness.

For nearly four centuries, there has existed along the shores of the St. Lawrence a people of French origin which, under two colonial regimes and many constitutional systems, has progressively affirmed itself through its institutions and, with the contribution of other communities, has developed to the point where it has acquired all the characteristics of a distinct society.

This people spread into the greater part of the continent and contributed to its development, but, in the course of time, the English language gained ascendancy everywhere except in Québec. This is how the Canadian duality came about.

The advent of mass communications, the spectacular expansion in the dissemination of sound and pictures, books and ideas, and increasingly, the movement of commercial goods and services, both along the north-south and east-west axes, lead us to consider North America as the point of reference of the linguistic, cultural and economic reality in which we are evolving. French-speaking persons today constitute scarcely 2 per cent of the North American population. At a ratio of fifty to one, specific measures are required to protect French as the everyday language. This fact is self-evident if we consider the case of the French-speaking communities outside Québec and

it also holds true in Québec, even though more than 80 % of its people are French-speaking.

The interests of French-speaking Quebeckers are akin to those of French-speaking communities outside Québec. For Quebeckers, the assimilation of French-speaking communities outside Québec is a loss to, and a dangerous weakening of, the French-speaking cultural mainstream. For their part, the French-speaking minorities in the other provinces recognize the importance of the vitality of the Québec French fact for the maintenance of their cultural and linguistic identity.

Although there are interests common to both, the means required to promote them differ according to the context. The Québec context is quite different from that of the other provinces with regard to language. Recognition of this reality is a prerequisite to the development of solutions which penalize neither group.

Thus, in the opinion of French-speaking communities outside Québec, section 23 of the Canada Act 1982 offers a means, insufficient in itself though it be, for protecting their rights. That section was designed to ensure protection of the linguistic rights of a minority and is, therefore, suited to their reality. On the other hand, the effect of section 23 in Québec is to neutralize certain measures adopted by the National Assembly of Québec to ensure the survival, affirmation and development of the French identity in the face of the enormous linguistic pressure placed upon it by the North American environment, and to which these measures were designed to act as a counterweight.

Québec is the only North American territory where the linguistic, cultural and economic concerns of the French-speaking population are predominant. Therefore, Québec legitimately claims confirmation of its powers in linguistic matters.

We take into account, however, that the people of Québec is not entirely composed of French-speaking citizens. The English language community, the ethnic communities and the native peoples have rights and, over and above their individual and particular rights, they have a more general right of access to all the resources society makes available to everyone.

In the past, Québec experienced certain periods of tension with regard to language matters. That tension bespoke the concern of the French-speaking population over its future, particularly in regard to the means of ensuring the survival of French over the long term which appeared to be clearly insufficient. In spite of these periods, a climate of tolerance and respect in the treatment of minorities has generally prevailed in the search for affirmation of the French character of Québec. In that respect we quote from the Pepin-Robarts Commission Report:

> *"We also expect that the rights of the English-speaking minority in the areas of education and social services would continue to be respected. These rights, and this should be stressed, are not now guaranteed by the Canadian constitution. Yet they are recognized under Bill 101, the charter of the French language, a law passed by a Parti Québécois government. Thus, we already have proof that the rights of the English-speaking community in Québec can be protected, without any constitutional obligation, and that the governments of Québec are quite capable of reconciling the interest of the majority with the concerns of the minority."*
>
> (The Task Force on Canadian Unity, *A Future Together*, Observations and Recommendations, January 1979, pp. 52-53)

Québec intends to fulfill its responsibilities to its minorities: to continue to actively promote their rights and to give them the means necessary to exercise them.

With regard to the English-speaking community, the Government of Québec is ready to undertake, within this new framework, to enshrine in its laws the right of the English-speaking minority to receive health care and social services in its own language, as well as its right to its own cultural and educational institutions.

The Government of Québec is also ready to amend the Charter of the French language to secure access to the English school system for the children of those who have received their primary instruction in Canada in English; it expects in return that *throughout Canada* those who benefit from section 23 will be able in actual fact to avail themselves of access to the French school system.

Québec also intends to fully support the French-speaking communities outside Québec. The Government of Québec is prepared to cooperate actively with any provincial government that wishes to improve the services it provides to its French-speaking minority. It is rather by way of intergovernmental cooperation than by the sole authority of the Constitution that progress can be achieved.

To sum up, the Government of Québec proposes:

- That the Constitution recognize that Québec has the exclusive right to determine its official language and to legislate on any linguistic matter within its jurisdiction.
- That Québec secure the right of the English-speaking minority to its cultural and educational institutions, as well as the right to receive health care and social services in its own language.
- That the Québec Charter of the French Language be so amended that the children of those who have received their primary instruction in Canada in English be guaranteed access to the English school system, regardless of their number.
- That throughout Canada, those who are eligible for instruction in French may in fact avail themselves of the rights guaranteed by Section 23 of the Canadian Charter of Rights and Freedoms.
- That to support the development of the French-speaking minorities outside Québec, agreements of mutual assistance be signed between the governments concerned.

---

2. Acceptance of the Primacy of the Québec Charter of Human Rights and Freedoms

In 1975 the people of Québec gave itself a Charter of Human Rights and Freedoms which is one of the most complete and generous there is.

A charter of rights and freedoms is the finest instrument for the affirmation of the values held by a people. It reflects both its most fundamental beliefs and the often difficult choices and decisions that a society is called upon to make. It secures to each person the minimal conditions for the exercise of his freedoms. It reflects, therefore, the framework in which individuals evolve as a collectivity. As such, and taking into consideration the distinctiveness of the people of Québec, it is not a matter of indifference as to whether it should be the Québec Charter or the Canadian Charter that should apply to the laws of Québec.

The Québec Charter is more generous than the Canadian Charter. It provides not only for civil and political rights, as does the Canadian Charter, but also for economic and social rights. Furthermore, the Québec Charter applies not only, as does the Canadian Charter, to relations between the State and the citizen, but also to relations between private persons. Moreover, it grants the right to equality and protection against discrimination in a way that is explicitly more extensive. Citizens have accessible and effective means of remedy against infringement of their rights through the Québec Charter. It recognizes the recourse of action for damages as well as injunctions. It also innovates in allowing the Courts to grant exemplary damages. The Charter also allows citizens to address the Commission des droits de la personne (Human Rights Commission) in the case of discrimination, one of the most important sources of litigation when it comes to rights and freedoms.

In reality, there is no essential difference between the Charter included in the Canadian Constitution and the Québec Charter as to the level of protection they both grant. Both charters prevail over the laws of Québec and, in this sense, both have a special status. Also, each includes an exception clause ("notwithstanding" clause) conferring on both the federal Parliament and the National Assembly the power to expressly override their fundamental provisions by a majority vote of their members. The power to override the constitutional Charter is

the same, therefore, for all the Canadian legislatures with respect to the Canadian Charter and is exercised in essentially the same way as for the Québec Charter.

In the event of its being amended, the Canadian Charter is subject to the constraints and uncertainty of the constitutional amendment procedure in which the other provinces play a preponderant role.

As for the Québec Charter, it has a quasi-constituional status and gives the ultimate responsibility in the affirmation of human rights and freedoms to the Québec legislature, elected by and responsible to the population for the proper functioning of society. The people of Québec is fully aware of its own distinctiveness; it possesses its own democratic institutions. It must take responsibility for rights and freedoms and ensure their evolution and extension within Québec without being constrained by a structure over which it has very little control. The inclusion of a charter in a constitution entails certain guarantees, but it is meaningful only to the extent where it is the people immediately concerned who determine its content and scope, which, for instance, would be the case if the Québec Charter were to be included in a Québec Constitution.

That is why the only Canadian constitutional limitations to which Québec has never objected and by which it agrees to be bound relate precisely to the political rights which ensure the proper functioning of our democratic system.

To sum up, Québec proposes:

- That only sections 3 to 5 of the Charter included in the Canadian Constitution which guarantee democratic rights continue to bind Québec without the National Assembly being able to make exceptions thereto.
- That Québec be empowered to subordinate its own laws only to the Québec Charter of Human Rights and Freedoms.

Chapter II

Modification of the Constitutional Amendment Procedure

1. Recognition of a Power of Veto over Federal Institutions and the Creation of New Provinces

With respect to federal institutions, namely the Senate and the Supreme Court, and the creation of new provinces with the exception of the composition of the Supreme Court, — which cannot be modified without the unanimous consent of the provinces — the consent of seven (7) provinces representing at least 50 % of the Canadian population is required to modify key elements of the Senate and the Supreme Court, and the representation in the House of Commons, as well as the establishment of new provinces.

This formula is a major improvement over what previously existed because most of these matters were formerly within the exclusive jurisdiction of the federal Parliament. The Government of Québec believes, however, that it must hold a power of veto over any change that could affect the role of Québec in these federal institutions, particularly over the composition of these institutions and their powers, as well as over the method of appointment of the persons called to be members thereof, and also over the creation of new provinces.

To sum up, the Government of Québec proposes:

- That Québec be recognized as having a power of veto over modifications of federal institutions and the establishment of new provinces.

---

2. Modification of the Division of Powers

The Resolution adopted on 1 December 1981 by the National Assembly requested that the method of constitutional amendment be modified either to grant Québec a power of veto or to secure to it a reasonable and mandatory compensation in all cases of non-participation in a constitutional amendment. The Government of Québec believes that this alternative must be maintained and it is ready to discuss it with the other governments.

In fact, each of these two formulas guarantees what is essential for Québec: that none of its powers can be taken away from it without its consent. The formula of non-participation with compensation, however, offers the additional advantage of flexibility.

To sum up, the Government of Québec proposes:

- That the present method of constitutional amendment be modified either to grant Québec a power of veto or to secure it a reasonable and mandatory compensation in the event of non-participation in a constitutional amendment.

Chapter III

Conditions for Participation

If redress of the wrongs caused Québec by the enactment without its consent of the Canada Act 1982 is imperative, it is also a prerequisite to the real participation of Québec in the Canadian federation. That participation will be ensured if the legitimate claims of Québec are satisfied as an outcome of constitutional negotiations which Québec intends to pursue in good faith, as it has done in the past, with its partners in the federation.

One cannot expect to achieve a new in-depth constitutional arrangement overnight. But, based on the numerous constitutional discussions of the past, it would be possible to reach a significant constitutional consensus which would result in agreements. On several points, these would settle the constitutional dispute between Québec and the rest of Canada and open the way to better participation in the work of the federation as well as to a continuous adaptation to the changes thereto which are bound to occur.

For Québec, the division of powers has always been and still is at the centre of the constitutional debate. The proposals which follow envisage a better division of powers. Such a division will be fair only if there is an adjustment, indeed an elimination of certain excessive powers of the federal Parliament. Futhermore, the division of constitutional powers should be adapted to the particular needs of the people of Québec. Certain judicial institutions should be reformed to better suit them to the new context.

1. The Revision of the Distribution of Powers

To ensure that its citizens have the services best suited to their needs, to avoid costly duplication and guarantee the efficacy of its actions, Québec must be able to exercise its existing constitutional powers without limitation and it must obtain increased powers in order to freely ensure its economic, social and cultural development.

a) The Restriction and the Elimination of Certain Unilateral Powers of the Federal Parliament

The unlimited use made by the federal Parliament of its spending power has distorted the division of powers codified in the Constitution.

The successive governments of Québec have always denounced the unrestrained use of this excessive power which has become one of the main causes of the dissatisfaction of Quebeckers with Canadian federalism.

However, Québec does not dispute the legitimacy of certain uses of the federal spending power and has particularly supported the use of it to combat disparities between the regions of Canada through unconditional grants. On the other hand, Québec has always opposed the use of spending power when the federal government has used it to intervene in areas outside its jurisdiction, such as in municipal affairs, health and education.

The Government of Québec proposes a two-tier structure for the limitation of the exercise of the spending power. First, conditional grants to the provinces should be, as the federal government itself suggested in 1969, subject to the prior consent of a majority of provinces. In addition, any province that refuses these grants should receive fair compensation.

In matters of education and culture, the federal government has used its spending power to create State corporations and make grants to individuals and institutions, thereby intruding in areas that are characteristic of Québec's distinctiveness. Limits should be imposed on such interventions by major readjustments. Starting immediately, payments to individuals and institutions should not

be made unless they have been the subject of prior agreement with the Government of Québec.

If the spending power can thus remain, the contrary holds true for the powers of disallowance and reservation still constitutionally held by the federal government. They are the residue of a colonial heritage whose obsolescence is today universally recognized. These powers no longer have any place in the Constitution. Moreover, the federal government committed itself in the past to abolishing them once the Constitution had been patriated, and Québec considers their abolition overdue.

To sum up, the Government of Québec proposes:

- That the federal spending power be limited in such a way that conditional grants to the provinces be subject to the consent of a majority of provinces, that any non-participating province be entitled to compensation, and that grants to individuals and institutions working in the areas of culture and education be submitted for approval by the Government of Québec.
- That the powers of disallowance and reservation be abolished.

---

b) Adapting the Division of Powers to the Needs of Québec

The benefits that will result from the limitation of the spending power and the abolition of the powers of disallowance and reservation are not sufficient. The special responsibilities of the Government of Québec in the economic, cultural and social fields can only be fulfilled if the division of powers is suited to the needs of Québec and its population. The present constitutional division of powers in economic matters must be reviewed and certain powers already held by Québec in the social and cultural domains as well as in the international domain must be increased.

The Government of Québec believes that policy-making authority in economic development and manpower must be defined in greater detail.

First, the Government of Québec insists that it should have the primary responsibility for the formulation and implementation of general economic policy in Québec. Québec considers itself responsible for its economic progress as well as the direction it can give to its overall development and especially that of its regions.

The economy in general will always remain a shared responsibility in a federation; however, as the Government of Québec stated at the economic conference held in Regina, the federal government should recognize that it is up to the provinces to first define the type of development which best suits them. General prosperity will be enhanced if the provinces are more dynamic. The Government of Québec insists, therefore, that its primary responsibility be recognized in the matter of the general direction of its economic development and that of its regions.

The same holds true for manpower policy which includes the placement, retraining and vocational training of workers. In the implementation of its policy on adult training, its apprenticeship policy, its back-to-work programs and its job creation policies, Québec has felt as never before the urgent necessity of achieving a better integration of manpower related activities, a goal which at present eludes it. Even though efforts have been made to minimize the disadvantages, there is a duplication of services in this area which is costly and inefficient. Quebeckers would be better served by a better integrated system; that, in effect, is what the great majority of organizations representing workers, employers and other concerned groups in Québec consulted on this subject believe.

And that is why the Government of Québec insists on holding the powers and resources such responsibility entails.

Furthermore, powers should be added which, even though they pertain to culture, will nevertheless have important economic repercussions. These are powers dealing with immigration and communications.

The Constitution should enlarge upon the Cullen-Couture Agreement of 1978 by confirming the paramountcy of Québec's powers in the matter of selection, and by extending that paramountcy to the integration and settlement of immigrants. These powers are of fundamental importance because it is upon their exercise that, among other things, the preservation and consolidation of the district character of the people of Québec depends.

With respect to communications, an increase in the powers of Québec in this area is in line with the common position taken by the Canadian provinces, a position in which the present federal government might wish to concur. Indeed, the negotiation of a redistribution of powers in this area would likely find support among the various governments. It should extend to the communications sector in general which would be of singular importance to Québec in terms of identity as well as cultural security.

Another field on which there has been a provincial consensus as to jurisdiction is the area of marriage and divorce. This jurisdiction should be transferred to Québec given its evident local and private nature.

The Government of Québec also reiterates certain long-standing claims in the field of international relations. It, therefore, asserts the following claims which it considers to be justified in view of the distinct character of the people of Québec.

The presence of Québec as a participant government in international organizations of the "Francophonie" is essential. This status of participant government is already granted to Québec within the framework of the "Agence de coopération culturelle et technique" and should be envisaged in the case of the planned "Sommet Francophone" and in what will result therefrom. Québec's presence in other international organizations relating to its jurisdictions should also be provided for in a suitable way.

To sum up, the Government of Québec proposes:

- That the primary responsibility of Québec over the general field of manpower with all the powers and resources such responsibility entails be confirmed.
- That the primary responsibility of Québec for the formulation and implementation of its general policy of economic development, including regional development, be recognized.
- That the paramount jurisdiction of Québec in the matter of selection and settlement of immigrants in Québec be recognized.
- That Québec be granted a significant increase in powers pertaining to communications.
- That Québec be granted exclusive jurisdiction in the matter of marriage and divorce.
- That in international matters, recognition be given to the specific situation of Québec in all that relates to its jurisdictions and its identity, particularly within the framework of the "Francophonie".

2. Reform of the Judicial System

The importance of the judicial process makes it necessary that Québec play a decisive role in the process of appointment of the judges of the Supreme Court of Canada. With regard to Québec Courts and administrative tribunals, the exercise of Québec's jurisdiction over the administration of justice is hampered by section 96 of the Constitution Act of 1867 which must be reassessed in further constitutional talks.

With the increased importance of the Courts in recent years, and in particular since the advent of charters of rights and freedoms, Québec's traditional stand in this matter takes on an even greater legitimacy.

a) Québec's Participation in the Appointment of Judges to the Supreme Court of Canada

The Government of Québec considers that it must be consulted in the appointment of the three judges from Québec. Even though the power of appointing Québec judges to the Supreme Court may in principle belong to the federal government, consultation with the Government of Québec should be formalized and its consent required.

The representation of Québec on the Supreme Court already provided for by federal statute as well as the principle of alternation in the appointment of the Chief Justice should be explicitly entrenched in the Constitution.

Apart from the composition of the Supreme Court, the distinctiveness of Québec should also be reflected in the jurisdiction of the Courts and of their judges. Specifically, the Government considers that questions of civil law should only be decided by judges from Québec, trained in its law.

To sum up, the Government of Québec proposes:

- That the Constitution explicitly recognize that three of the nine judges of the Supreme Court of Canada come from Québec, as well as the principle of alternation in the appointment of the Chief Justice.
- That the Constitution recognize the right of the Government of Québec to participate in the appointment of Québec judges to the Supreme Court of Canada and that its consent be obtained before their appointment.
- That judges from Québec trained in its law have sole authority in matters of civil law.

---

b) The Attribution of Authority over the Appointment of Judges to the Québec Superior Courts

While Québec does not require exclusive jurisdiction over the process of appointment of its judges on the Supreme Court, it requires such jurisdiction over the appointment of judges to the Québec Court of Appeal and Superior Court.

It is important to correct forthwith the anachronism of a constitutional procedure whereby the federal government appoints judges who are part of the Québec judicial system and are subject to the authority of Québec under section 92 (14) of the Constitution Act of 1867.

This situation should be remedied by instituting a procedure of appointment whereby Québec would have the authority over the appointment of judges with the obligation of prior consultation with the federal government. Indeed, it is desirable that the latter be part of the appointment process in view of the fact that the Québec superior Courts must apply many federal statutes.

It is therefore expedient to amend section 96 of the Constitution Act of 1867 to grant the Government of Québec the power to appoint judges to the Québec superior Courts.

To sum up, the Government of Québec proposes:

- That section 96 of the Constitution Act of 1867 be amended so as to recognize the authority of Québec to appoint judges to the Québec superior Courts following consultation with the federal government.

---

3. The Need for an Ongoing Process of Constitutional Negotiations

Constitutional discussions should be reopened with the clear understanding that a comprehensive review of the Constitution must eventually be proceeded with. The process that is beginning will only be truly meaningful if it includes key elements which evidence a new spirit of dialogue.

Québec's propositions are designed to generate a new impetus for profound change in the Constitution.

The Government of Québec believes that over and above the conditions of a new accord, the solemn commitment of the governments to pursue constitutional review must be obtained forthwith.

During this review process, Québec would like to see, in addition to the proposals set out in this document, other aspects of the division of powers addressed, particularly the residual and declaratory powers of the federal Parliament, as well as questions relating to income security and certain other dimensions of international relations. Québec also would want the reform of the central institutions, especially the Senate, to be proceeded with.

Conclusion

In preparing these proposals, the Government has first been mindful of the people of Québec, its aspirations and its needs. The Government, therefore, will be particularly attentive to its reactions and comments.

All these proposals are aimed at enhancing the ability of Québec's institutions to fully assume their responsibility to promote the general well-being.

Among these institutions, the National Assembly is of paramount importance. It must be involved.

These proposals also concern the whole of the Canadian population. The willigness for redress expressed by the Prime Minister of Canada has given rise to hope on both sides. The people of Québec and its Government respond to this willingness. We firmly believe that through mutual respect, good faith and frank negociations, there exists a real possibility of creating the conditions leading to a better future.